

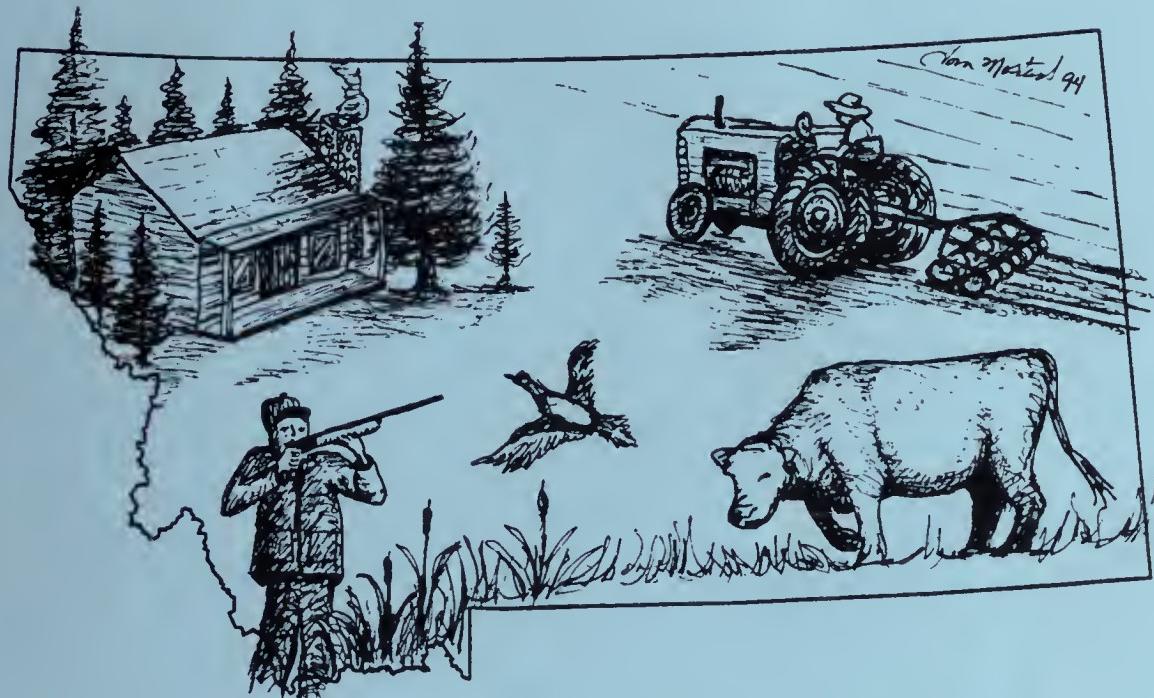
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1994 Advisory Council
Recommendations
to the Board of
Land Commissioners

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STATE LAND BOARD ADVISORY COUNCIL



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RECOMMENDATIONS TO THE BOARD OF LAND COMMISSIONERS

September 20, 1994

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STATE LAND BOARD
ADVISORY COUNCIL

RECOMMENDATIONS TO THE
BOARD OF LAND COMMISSIONERS

September 20, 1994



Table of Contents

Introduction	1
Executive Summary	2
Board Direction	3
Mission Statement, Goals & Process	4
Grazing Rental Recommendations	5
Cropland (agricultural) Rental Recommendations	6
Recreational Use Rental Recommendations	7
Outfitting Rental Recommendations	8
Cabinsite/Homesite Rental Recommendations	9
General Recommendations	10
Appendices	
A Written Resources reviewed	11
B Oral Presentations and Testimony	13
C Council Meeting Minutes	
November 15, 1993	15
January 17, 1994	18
February 11, 1994	20
March 21, 1994	23
April 25, 1994	27
June 14, 1994	29
July 26, 1994	32
August 16, 1994	35

Introduction

The 1993 Legislature in SB424, directed the Board of Land Commissioners (Board) to review rental rates charged for uses on state school trust land and to set those rate so that full market value was being received. The bill required the Board in setting those rates, to consider recommendations from a council appointed by them which was broadly representative of the users and beneficiaries of those lands. At their November 15, 1993, meeting, the Board appointed the following 15 members to the State Land Board Advisory Council (Council):

Dorothy Laird, Whitefish	Sen. Ken Mesaros, Cascade
Rick Miller, Missoula	Joan Schmidt, Fairfield
Tom Loftsgaard, Peerless	Dr. Charles Buehler, Butte
Mark Rasmussen, Hogeland	Marilyn Laughery, Lewistown
Bill Crismore, Libby	Lois Hill, Geyser
Sen. Chet Blaylock, Laurel	Rick Hartz, Dillon
Ken Greslin, Broadus	Dave Moore, Big Timber
Kelly Flaherty, Canyon Creek	

The Council, charged by the Board to review the fees charged for grazing, crops, outfitting, cabinsite/homesite leases and recreational use, met eight times between November of 1993 and August of 1994. The fifteen member Council represented a diverse cross-section of user groups of State School Trust Land, as well as the beneficiary of the trust income, education.

The Council's mission, to provide the Board with advice on fees and rentals on state lands, has proven a complex and controversial task. Montana has entered a period of change that makes the job of quantifying the rental and lease values of state land extremely difficult. As land values escalate, environmental concerns increase, recreational use expands, agricultural prices fluctuate, tax structures change and a host of other factors loom on the horizon, the complexity of determining full market value of fees and rentals on state land becomes a daunting undertaking.

The Council struggled, often emotionally, to consider the concerns of each of the represented interests while still attempting to maximize the return to the school trusts. The apparently simple goals of the Council proved amazingly difficult to achieve. Oral and written testimony were used as resources. Long, sometimes heated, discussions incorporating the resource information as well as life experience aided the council in arriving at what a majority of the Council felt was full market value. As might be expected, few decisions were without controversy or disagreement, even after the final vote.

Recognizing that no source is infallible, that no person, council, consultant or institution can set a perfect fee and that legislative and regulatory action can undo months of work, the Council presents the following recommendations to the Board for its consideration.

EXECUTIVE SUMMARY OF RECOMMENDATIONS

	<u>CURRENT RENTAL</u>	<u>RECOMMENDED</u>
GRAZING	6 X \$/LB (\$4.09/AUM) <small>(using 1993 beef \$/lb)</small>	7.54 X \$/LB (\$5.14/AUM)
CROPLAND	25% cropshare	25% cropshare
RECREATIONAL USE	\$5.00	\$25.00 residents \$50.00 nonresidents
OUTFITTING	Negotiated and/or competitive bid	Negotiated and/or competitive bid
CABINSITE/ HOMESITE	3.5% of appr value or \$150.00 minimum	3.5% of appr value or \$250.00 minimum

ADDITIONAL RECOMMENDATIONS:

The Council further recommends that the Board consider the following options:

1. Grazing - Allow the lessee the option to pay an additional fee (on top of the AUM fee) to control recreational use.
2. Cropland - Consider requiring cash leases for all cropland leases.
3. Cropland - Consider legislation to enable DSL to market the state's share of crops at the most advantageous time.
4. Recreational Use - Pursue legislation to allow DFW&P to bargain a fee with the DSL for recreational access to state lands for hunting and fishing. Funding (or a portion thereof) would be obtained for this program by adding an amount to conservation or hunting and fishing licenses. A separate license would be provided by DSL for all other recreational activities.
5. Cabinsites/Homesites - The board should direct the DSL to determine accurate boundaries of cabinsites/homesites.
6. General - Explore trade and sale options (including land banking) which would enhance and protect trust assets.
7. General - Liquidate in-holdings (state parcels entirely surrounded by one private landowner) and small non-productive parcels.

**BOARD DIRECTION
to the
COUNCIL**

Article X, Section 11(2) of the Montana Constitution states, "No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state."

During the 1991 Legislature monies were appropriated to the Department of State Lands to contract a study of rental rates on state lands. The firm Bioeconomics, Inc. was contracted and produced the study entitled Economic Analysis of the Values of Surface Uses of State Lands.

The statutes regarding the various lease rates all refer to the "full market" value of the use that is being allowed by lease or license. Prior to the 1993 Legislature, it was unclear in the statutes as to who (the Board or the Legislature) was responsible for ensuring full market value in lease rates.

The Bioeconomics, Inc study and the issue over responsibility for achieving full market value led to the introduction and subsequent passage of Senate Bill 424 during the 1993 Legislative session. SB 424 clarified that it is the Board's responsibility to set rental rates to achieve full market value for uses of state trust land.

The Council was established with the passage of Senate Bill 424 during the 1993 Legislature for the purpose of advising the Board in the setting of rental rates.

The four primary areas of concern are grazing leases, agricultural leases, recreational use licenses and "other" surface leasing (cabin-site/homesite leases and outfitting licenses). The Council shall direct its efforts at studying these uses and the full market value of these uses. The makeup of the Council was purposefully diverse to cover the entire state geographically, occupationally, and to be broadly representative of the users and beneficiaries of the state trust lands.

The Council will wish to consult all available information regarding lease rates that is currently available. This may include requests for experts to make presentations to the Council. The Council will also wish to hear from the public regarding the rental rates. Many alternatives may result from this information gathering and public input. The Council will need to consider all of these alternatives to make recommendations as to what are the best methods of achieving the full market value from the trust resources.

The statutory authorization for the Council sunsets on March 1, 1996. The Board would like to receive recommendations from the Council by December of 1994 and then take action regarding the recommendations by July of 1995. This would allow for consultation between the Board and the Council during rulemaking which may result from recommendations made by the Council.

MISSION STATEMENT

To provide the Board with advice on fees and rentals on state lands.

GOALS

1. Full market value for grazing.
2. Full market value for cropping.
3. Full market value for cabin sites.
4. Full market value for recreation.
5. Full market value for outfitting.
6. Review and expand goals.

PROCESS

1. Establish a knowledge base (gather information).
2. Evaluate current methods.
3. Look at options.
- 3(a). Choose option(s).
4. Prepare draft.
5. Submit draft recommendation to public for review.
6. Review public comment and finalize recommendation as appropriate

Recommendation(s) to the Board.

Grazing

Currently there are approximately 1,023,000 Animal Unit Months (AUMs) leased on the 4,100,000 acres of state grazing land. To date, the minimum rental rate was determined by multiplying the previous years average price per pound of beef cattle in Montana times 6. The 1994 rental based on 1993 cattle prices is \$4.09 per AUM. In 1994, these lands generated \$4,264,030.

RECOMMENDATION: The Council recommends the per AUM minimum rental rate be set at 7.54 times the previous years average price per pound of beef cattle in Montana. Using the 1993 beef prices, the rental would be \$5.14 per AUM.

RATIONALE: The rate was determined by taking the average private lease rate (\$11.40/AUM) and adjusting it in comparison to the services and requirements of state leases. The adjustments were made as follows:

<u>Deductions</u>	<u>Additions</u>
1. Weed Control	\$ 2.92
2. Fencing	\$ 1.85
3. Water Developments	\$ 1.00
4. Non-use	\$.56
5. Access	\$ 1.57
6. Fire Suppression	<u>\$.06</u>
Deduction Subtotal	\$ 7.96
	1. Length of Lease \$.56
	2. Preference Right <u>\$ 1.14</u>
	Additions Subtotal \$ 1.70

$$\$11.40 - \$7.96 + \$1.70 = \$5.14$$

$$\$5.14 \div 1993 \text{ price for beef} = \text{Multiplier}$$

$$\$5.14 \div .682 = 7.54$$

ADDITIONAL RECOMMENDATIONS: The Council further recommends the Board consider the following options in regards to state grazing leases:

1. Allow the lessee the option to pay an additional fee (on top of the AUM fee) in order to control recreational use.

Cropland

There are approximately 560,000 acres of state trust land classified as agricultural cropland. The minimum rental for those lands are $\frac{1}{4}$ crop to the state. In FY 94, those lands generated \$9,486,264.

RECOMMENDATION: The Council recommends the minimum crop share remain at $\frac{1}{4}$ crop to the state.

RATIONALE: The Council found that private lease rates are typically higher than $\frac{1}{4}$ crop, but that the lessor normally contributes a proportionate share of certain costs (fertilization, weed control, etc.) Since the state does not contribute to any of the costs of production, the Council believes the $\frac{1}{4}$ crop represents full market value.

ADDITIONAL RECOMMENDATIONS: The Council further recommends the Board consider the following options in regards to state cropland leases:

1. Consider requiring cash leases for all cropland leases.
2. Consider legislation to enable DSL to market the state's share of crops at the most advantageous time.

Recreational Use

In 1992, HB 778 opened legally accessible state lands to general recreation use for individuals possessing a \$5.00 recreational license. Initially, general recreational use included only licensed hunting and fishing. During 1994, the Board amended the definition of general recreational use as any type of non-concentrated, non-commercial outdoor recreation activity except disturbance of archeological, historical or paleontological sites, wood gathering, tree cutting, commercial rock or mineral collecting and trapping. Under the recreational use rules, certain lands are categorically closed. Additionally, a lessee can request permanent, seasonal or temporary closures or may close lands subject to certain provisions for management reasons. 29,003 licenses were sold in 1992, and 31,411 were sold during 1993.

RECOMMENDATION: The Council recommends the fee for resident license holders be \$25.00 and \$50.00 for non-residents.

RATIONALE: The Council believes that general recreational use has reduced the value of state grazing leases. The recommended rate for recreational licenses were set to generate revenues at least equal to what was removed from the grazing leases.

ADDITIONAL RECOMMENDATIONS: The Council further recommends the Board consider the following options in regards to recreational use:

1. Pursue legislation to allow the DFW&P to bargain a fee with the DSL for recreational access to state lands for legal hunting and fishing. Funding (or a portion thereof) would be obtained for this program by adding an amount to conservation or hunting and fishing licenses. A separate license would be provided by DSL for all other recreational activities.

Outfitting

HB 778 allowed for issuing Special Recreational Use licenses for commercial uses such as outfitting on state land. Exclusive (to outfitters) or non-exclusive licenses can be issued with the rental negotiated between the outfitter and Department of State Lands staff. The licenses are competitively bid when multiple outfitters are interested in a specific area or if the Department determines it appropriate. In 1993, 140 licenses were issued generating \$76,047 in income.

RECOMMENDATION: The Council recommends that the current system for setting outfitting license rentals be maintained.

RATIONALE: Because of the site specific nature and wide variability in outfitting uses, the Council believes the current method of case by case negotiation or bidding represents the best method for obtaining full market value for this use.

ADDITIONAL RECOMMENDATIONS: The Council further recommends the Board consider the following options in regards to outfitting:

None

Cabinsites/Homesites

There are 800 cabinsites and homesites on state trust land. In FY94, they generated \$361,000 in revenue. The minimum rental rate is 3½% of the full market land value as set by the Montana Department of Revenue (DOR) or \$150.00, whichever is greater. Rental rates are adjusted at 5 year intervals during the lease using new DOR values from their cyclical reappraisal.

RECOMMENDATION: The Council recommends the lease rate for cabinsites and homesites remain at 3½% of the full market value of the land as determined by the DOR or \$250.00, whichever is greater.

RATIONALE: The Council believes that since land values are increasing because of reappraisal, lease revenues will increase even at the 3½% rate.

ADDITIONAL RECOMMENDATIONS: The Council further recommends the Board consider the following options in regards to cabinsites/homesites:

1. The Board should direct the DSL to determine accurate boundaries of cabinsites/homesites.

General recommendations

The following are general recommendations which apply to the overall management and administration of state trust lands. The Council recommends that the Board consider:

1. Explore trade and sale options (including land banking) which would enhance and protect trust assets.
2. Liquidate in-holdings (state land parcels entirely surrounded by one private land-owner) and small non-productive parcels.

Appendix A

Written Resources reviewed

1. Senate Bill 424 as passed by the 1993 Legislature.
2. The Enabling Act of 1889 (25 STAT. 679).
3. Copies of the Montana Code Annotated as related to trust land administration.
4. Surface Management Rules (Administrative Rules of Montana 26.3.129-165).
5. Rules for Recreational Use of State Land. (ARM 26.3.180-199).
6. Several DSL fact sheets regarding aspects of surface leasing, revenues received, revenue distribution.
7. Public Land and Mining Law. 3rd Ed. Mall, 1981.
8. Montana State Lands: Their Nature and Prospect. Burnett. In Western Wildlands, Winter, 1978.
9. Report of the Attorney General. Woodahl, July 7, 1976.
10. Economic Analysis of the Values of Surface Uses of State Lands. Bioeconomics, Inc. February 1993. Five volume report as submitted to the Legislature and the Land Board.
11. Written testimony by the Montana Stockgrowers Association regarding the Bioeconomics study.
12. A preliminary evaluation of the Bioeconomics study by Dr. Terry Anderson and Dr. Myles Watts, Montana State University.
13. Critique of the Bioeconomics study by Dr. Gerhard Rostvold and Dr. Thomas Dudley, Pepperdine University.
14. 1993 Wyoming State Trust Land Task Force Report. October, 1993.
15. Report to the Montana Department of State Lands for the Establishment of a Fair Market Value for Grazing Rates on State Controlled Lands. Watts and Associates Management Analysis, Inc. 1988.

16. A Comparative Analysis of the Economic, Financial and Competitive Conditions of Montana Ranches Using Federal Forage and Montana Ranches Without Federal Grazing Allotments. Rostvold and Dudley, 1993.
17. Information regarding use of data from the Montana Agricultural Statistics Service in currently used grazing fee formula.
18. Report and Recommendations of the Grazing Fee Advisory Committee to the Director, Oregon Division of State Lands. September 15, 1993.
19. Draft Chapter 5. Agricultural and Grazing Leases. This is a draft copy from the book currently being written by Dr. Jon Souder and Dr. Sally Fairfax regarding state trust land administration throughout the western United States.
20. DSL lease agreement forms.
21. Montana Lease Agricultural Survey. USDI, Bureau of Land Management. January, 1993.
22. Determining Ground-Lease Rental Rates. Chris Carneghi, MAI. In The Appraisal Journal, April 1994.

Appendix B

Oral Presentations and Testimony

1. Bud Clinch, Commissioner of State Lands
2. Jeff Hagener, Lands Division Administrator, DSL
3. Kevin Chappell, Surface Management Bureau, Lands Division, DSL
4. Jeff Jahnke, Deputy Administrator, Forestry Division, DSL
5. John North, Chief Legal Counsel, DSL
6. Dr. John Duffield, University of Montana Economics Professor and principle owner of Bieconomics, Inc.
7. Jim Almond, rancher and economist, Billings, MT.
8. Dr. Brian Sindelar, Rangehands, Inc., Bozeman, MT.
9. Dr. Myles Watts, Montana State University Professor of Agricultural Economics.
10. Jim Peterson, Executive Director, Montana Stockgrowers Association.
11. Dr. Jon Souder, Assistant Professor of Forest Policy at Northern Arizona University.
12. Tim Watts, Watts and Associates, Billings, MT.
13. Steve Roth, rancher and state land lessee from Big Sandy, MT.
14. Jim Hagenbarth, rancher and state land lessee from Dillon, MT.
15. Pat Graham, Director, MT Department of Fish, Wildlife and Parks
16. Dave Mott, Associate Director, MT DFWP
17. Les Sisbury, Property Assessment Division, MT Department of Revenue
18. Dave Turner, cabinsite lessee from Placid Lake, MT.

19. Tim Tanberg, cabinsite lessee from Seeley Lake, MT.
20. Jerry Wells, Field Services Division Administrator, DFW&P
21. Jeanne Fairbanks, Special Uses Supervisor, Forestry Division, DSL
22. Marylee Norris, Special Uses Supervisor, Lands Division, DSL
23. Scott Frickel, Recreational Use Coordinator, Lands Division, DSL

Appendix C

Council Meeting Minutes

- Minutes from November 15, 1993 meeting -

PRESENT:	Dorothy Laird, Whitefish Rick Miller, Missoula Tom Loftsgaard, Peerless Mark Rasmussen, Hogeland Bill Crismore, Libby Sen. Chet Blaylock, Laurel Ken Greslin, Broadus	Sen. Ken Mesaros, Cascade Joan Schmidt, Fairfield Dr. Charles Buehler, Butte Marilyn Laughery, Lewistown Lois Hill, Geyser Rick Hartz, Dillon Dave Moore, Big Timber
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ABSENT: Kelly Flaherty, Canyon Creek

The first meeting of the State Land Board Advisory Council began at 7:45 on Monday, November 15, 1993 with an informal breakfast hosted by the Department of State Lands in the Governor's Reception Room. Members of the Council had an opportunity to meet and converse with other members of the council, Land Board members and their staff, and DSL personnel.

The Council meeting then moved to the old supreme court chambers to sit in on the November Land Board meeting. The members of the council were formally introduced and each gave a brief oral resume to the Board and the audience. Commissioner Clinch read a statement prepared by Ms. Flaherty to introduce her. The Board members each gave a brief discussion of the direction and timeframes that the Council should keep in mind. A copy of summarized Board comments is attached. The Council remained in attendance for the balance of the Board meeting to get a feel for issues at hand.

After the Board meeting, the DSL briefly discussed management of state lands. Jeff Hagener gave a general overall department review. Kevin Chappell discussed grazing, agricultural and recreational programs. Jeff Jahnke discussed Forestry programs with particular emphasis on cabinsite leasing. This concluded the morning session.

The afternoon session began with John North discussing the legal requirements of SB 424. The grazing fee recommendation must be based on a formula (Average price for beef x Factor). The rental for homesite leases has no such parameters. The council must recommend a fee for the recreational use license.

The council then undertook discussion regarding how the council should operate, specifically regarding a chairperson. No one felt comfortable with voting on a chairperson at

this first meeting. It was agreed that a chairperson from the council would be determined at the next meeting. It was then moved seconded and unanimously approved that Commissioner Clinch be appointed as acting chairman until the next meeting.

John North then explained the current rulemaking taking place to establish interim lease fees at current rate until the advisory council has had time to meet and make recommendations to the Board. The Council agreed with the approach that the department is taking with the interim rulemaking. Joan Schmidt moved and Tom Loftsgaard seconded that the council send written comment to the Board showing the council's approval of the interim rules. Commissioner Clinch will prepare the written comment and submit it on behalf of the council. A copy of that written comment is attached. The council moved that the Board of Land Commissioners continue the existing rates until the first year after the Board adopts new rates.

Rick Hartz asked John North about the concept of undivided loyalty. John explained that a trustee must have an undivided loyalty to the trust. This has been applied to state land boards around the region in supreme court cases .

Senator Mesaros discussed his involvement in SB 424. He wanted to review other materials in addition to the Duffield study. There are several other studies that may be pertinent to the issues this council will be dealing with. The recent study by Pepperdine University was mentioned. Senator Mesaros also felt the grazing rates should be continued to be determined by a formula.

Senator Blaylock discussed his involvement in SB 424. He felt the council needed to establish a basis to work from. He felt the Duffield study should be considered that basis because it had been authorized and paid for by the legislature specifically to address the state rental rate issue. Senator Blaylock thought it more appropriate to recommend policies to the Land Board rather than specific formulas.

Mark Rasmussen felt that the council should not rely on just the Duffield study, but look at all available information.

In further discussions, the council indicated that other available information should be reviewed before any decision was made in regard to a basis to work from. There was general agreement that it would be appropriate for Dr. Duffield to present his study to the council at the next meeting and answer questions. It was also felt that other economists that were critical of the Duffield study be allowed to present their opinions. Copies of the Surface Management Rules and Recreational Use Rules were requested by the Council and provided by the department.

Commissioner Clinch asked that the council members recommended to the Department any other studies or information that they wished to review. Several items were listed and the department was directed to obtain copies of the most appropriate information and

send it to the council members prior to the next meeting. Commissioner Clinch also stated the department would arrange for the requested presentations for the next meeting.

Marilyn Laughery suggested the council define what its charge is.

Joan Schmidt and Dave Moore led the council to outline a mission statement, goals and process on flip charts.

The following were agreed upon:

- FLIP CHARTS FROM NOVEMBER 15, 1993 MEETING -

MISSION STATEMENT

To provide the Land Board with advice on fees and rentals on state lands.

GOALS

1. Full market value for grazing.
2. Full market value for cropping.
3. Full market value for cabin sites.
4. Full market value for recreation.
5. Full market value for outfitting.
6. Review and expand goals.

PROCESS

1. Establish a knowledge base (gather information).
2. Evaluate current methods.
3. Look at options.
- 3(a). Choose option(s).
4. Prepare draft.
5. Submit draft recommendation to public for review.
6. Review public comment and finalize recommendation as appropriate

Recommendation(s) to the Board.

There was discussion about the length of time for the next meeting (1, 2 or more days). There was general agreement that the next meeting should be a one day meeting located in Helena. DSL will make arrangements for a room for the next meeting. The next meeting date was set for January 17, 1994 beginning at 8:00 am.

- Minutes from January 17, 1994 meeting -

PRESENT: Dorothy Laird, Whitefish
Rick Miller, Missoula
Tom Loftsgaard, Peerless
Mark Rasmussen, Hogeland
Bill Crismore, Libby
Sen. Chet Blaylock, Laurel
Kelly Flaherty, Canyon Creek

Sen. Ken Mesaros, Cascade
Joan Schmidt, Fairfield
Dr. Charles Buehler, Butte
Marilyn Laughery, Lewistown
Lois Hill, Geyser
Rick Hartz, Dillon
Dave Moore, Big Timber

ABSENT: Ken Greslin, Broadus

The second meeting of the State Land Board Advisory Council began at 8:00 on Monday, January 17, 1994, in Room 312-2 of the State Capitol with Commissioner Clinch acting chairman.

Jeff Hagener gave an update of issues in the recent special legislative session which impacted state lands. He also discussed the written statement submitted by Commissioner Clinch on behalf of the advisory council supporting the proposed rules regarding interim fee and rental rates.

Commissioner Clinch called for comments/discussion on the minutes from the November 15, 1993 meeting. Senator Blaylock moved to adopt the minutes as written. Seconded by Marilyn Laughery. Passed Unanimously.

At the request of Kelly Flaherty, each council member gave a brief discussion on their background and what they felt they brought to the council.

At this time, the council agreed to defer selection of a chairperson until the end of the meeting. Commissioner Clinch agreed to continue as acting chairman until that time.

Commissioner Clinch and Jeff Hagener led a general discussion of the information that had been mailed to the council members in December. Different aspects of trust land management in the western states was also discussed.

Dr. John Duffield of Bioeconomics, Inc., gave a presentation of the methods and conclusions from his economic analysis of fair market value for grazing leases. (reference the five volume report, Economic Analysis of the Values of Surface Uses of State Lands, Bioeconomics, Inc., February 1993).

Jim Almond and Dr. Brian Sindelar (contributors to the study) outlined their involvement in the Duffield grazing study, and discussed their concerns about its conclusions. Mr. Almond had not had an opportunity to review the final data base, and therefore, was reluc-

tant to offer comments about the recommendations of the study. Dr. Sindelar presented the concerns he had about the study (refer to Dr. Sindelar's handout - attachment "A"). This concluded the morning session.

After lunch, Dr. Myles Watts, discussed his review of the grazing study (refer to his handout - attachment "B").

Dr. Duffield responded to some of the concerns voiced by the previous three speakers regarding the grazing portion of the Bioeconomics study.

Dr. Duffield continued his presentation by discussing the methods and recommendations on his studies for cropland and cabinsite leases, and recreational and outfitting licenses. Dr. Duffield offered names of several statisticians and economists who had reviewed the study that the council may wish to seek testimony from.

Commissioner Clinch directed the council to elect a chairperson. The floor was opened for nominations. Tom Loftsgaard nominated Dave Moore - seconded by Marilyn Laughery. Rick Miller nominated Lois Hill - seconded by Dorothy Laird. Marilyn Laughery moved that the nominations be closed - seconded and passed unanimous. Commissioner Clinch called for votes on the nominations - Dave Moore received 12 votes, Lois Hill received 2. It was agreed that Lois Hill would act as vice-chairperson.

Dave Moore assumed the chair and requested discussion on how to proceed. It was agreed to invite Dr. Jon Souder to the next meeting to give an overview of western states trust management. Dr. Souder (currently with the School of Forestry, Northern Arizona University) is the director of the State Lands Project, College of Natural Resources, University of California, Berkeley. The States Lands Project will be finalized with publication of a book regarding state trust lands in the near future. Jeff Hagener stated he would make arrangements for Dr. Souder to give a presentation and answer questions during the morning of the next council meeting.

The council also agreed that the best method of proceeding would be to work on a single issue until a recommendation was reached. The council could not reach a consensus on which rate to proceed with at the next meeting. However, it was felt that the grazing rate had received the most attention thus far. Therefore, the afternoon of the next meeting will be tentatively scheduled to discuss grazing rates.

Some members of the council felt it would be appropriate in future meetings for members to bring information and issues received from constituents. This information and issues will be discussed as the chairperson deems appropriate.

The next meeting was scheduled for February 11, 1994 in this same room (312-2 of the Capitol). The meeting will begin at 8:00 am and plan to be over at 5:00 pm.

- Minutes from February 11, 1994 meeting -

PRESENT: Dorothy Laird, Whitefish
Rick Miller, Missoula
Tom Loftsgaard, Peerless
Mark Rasmussen, Hogeland
Bill Crismore, Libby
Sen. Chet Blaylock, Laurel
Dave Moore, Big Timber

Sen. Ken Mesaros, Cascade
Joan Schmidt, Fairfield
Dr. Charles Buehler, Butte
Marilyn Laughery, Lewistown
Lois Hill, Geyser
Kelly Flaherty, Canyon Creek

ABSENT: Ken Greslin, Broadus
Rick Hartz, Dillon

The third meeting of the State Land Board Advisory Council began at 8:00 am on Monday, February 11, 1994, in Room 312-2 of the State Capitol with Dave Moore as chairman.

Chairman Moore called for comments/discussion on the minutes from the January 17, 1994 meeting. The minutes as written were moved by Marilyn Laughery, seconded and passed unanimously.

Chairman Moore informed the Council that he had been contacted by Jim Peterson of the Montana Stockgrowers Association about allowing additional presentations about grazing rates by economists and lessees in Montana who have reviewed the grazing rate issue. Chairman Moore explained that he felt it was important to allow affected interests to address the council. Chairman Moore asked the Council if anyone objected to allow these interested parties opportunity to address the council this afternoon. The council discussed the issue and no one objected to the additional presentations this afternoon. There was discussion on insuring that all interests were given equal opportunity to address the council. It was agreed that all interests should be allowed opportunity and in the future it would be more appropriate to have been placed on the published agenda in advance of the meeting. Chairman Moore stated he would work closely with the DSL in preparing future agendas to include all necessary information.

Jeff Hagener gave a brief overview of the information mailed out since the last meeting.

Chairman Moore then introduced Dr. Jon Souder. Dr. Souder is currently Assistant Professor of Forest Policy at Northern Arizona University. He has a PhD in Natural Resource Economics and Policy from the University of California. His dissertation was a comparative study of Trust Land Management in ten western states. He has continued to study trust land management over the past four years and his efforts will culminate in a book that the University Press of Kansas will publish this fall.

Dr. Souder discussed duties of the states as trustees, trust land revenue flows, agriculture and grazing fee setting mechanisms, differences among states' grazing fee systems, commercial development possibilities and commercial programs in various states, and various approaches to recreational access on state lands. Dr. Souder spent additional time in discussing the Oregon grazing fee advisory committee of which he was member. Copies of Dr. Souder's overlays are attached as attachment "A".

Upon conclusion of Dr. Souder's presentation and question and answer session the council discussed voting procedures of the council and ground rules. The council agreed to the following rules for voting:

1. There must be at least ten council members present for a vote.
2. There must be a majority (greater than half) vote for a motion to pass.
3. All members present must vote. Abstentions will not be allowed.
4. A motion fails on a tie vote.
5. The Chairperson must vote, and he/she will vote last.

The following ground rules were put forth by Chairman Moore, discussed by the Council and agreed to by a consensus of the Council:

1. Everyone should be honest and open in discussion of the issues.
2. Everyone should focus on the issues - not the personalities involved.
3. Input from the public is welcome, but will be allowed at the chairperson's discretion.
4. Questions and discussion from the public and council members shall be directed through the chairperson.

Senator Mesaros requested that the DSL provide copies of the statutes referenced in SB 424 to all of the council members to insure that everyone understands how the statutes tie together. The DSL will provide copies of the referenced statutes prior to the next meeting.

The council discussed the need for DSL legal counsel to be available for input at future meetings. Commissioner Clinch stated that the DSL will make legal counsel available on an as needed basis for future meetings.

The council then discussed whether different use rental rates were intermingled or whether they could be handled independent of one another.

At this point the council adjourned for lunch.

After lunch, Jim Peterson gave a brief overview of the Stockgrower's interest in the council deliberations. Mr. Peterson stated the Stockgrower's membership is currently 3,500 many of which are not state land lessees. Mr. Peterson reviewed his involvement with HB 778 (Recreational Use from the 1991 session), the Duffield study, and SB 424 which established this council. Mr. Peterson emphasized how all aspects of the issues must be studied

before the council adopts a recommendation. Mr. Peterson introduced the speakers that would follow his presentation.

Tim Watts of Watts and Associates out of Billings gave the next presentation on his updating of the study he had conducted in 1988 for the Land Board regarding grazing fees. Mr. Watt's handout is included as attachment "B".

Steve Roth gave the next presentation. Mr. Roth is president of the IX Ranch Company of Big Sandy. The IX Ranch Company is a large lessee of state land in Chouteau County. Mr. Roth's handout is included as attachment "C".

Jim Hagenbarth gave the next presentation. Mr. Hagenbarth is a rancher from the Dillon area. Mr. Hagenbarth leases state lands in both Idaho and Montana. Mr. Hagenbarth's notes are included as attachment "D".

After the presentations, the council discussed how to proceed. The process established in the first meeting was reviewed by Joan Schmidt. There was general agreement that the council should address the individual rental rates as separate issues. A recommendation should be drafted for an individual use rental rate and then move on to the next use. After drafts recommendations had been prepared on all uses, then the council would return to discuss each recommendation again and make adjustments as necessary. There was emphasis that these initial recommendations are draft only until the council votes to finalize them.

The council agreed to address the grazing issue first and then agricultural rentals next. The next meetings primary focus will be on drafting a recommendation regarding the grazing rental rates.

There was some discussion on whether the council should go beyond the charge established by SB 424 and recommend further legislation regarding state leases. Senator Mesaros reviewed the primary mission of the advisory council on grazing rentals is to recommend a multiplier factor to place into the current formula.

Tom Loftsgaard presented specific lease cases he felt were pertinent to the discussion on grazing rental rates. Mr. Loftsgaard discussed carrying capacities and the issue of assessing grazing rentals on grazing lands intermingled with crop lands. Additional discussion ensued on the definition of an AUM, competitive bidding, stewardship responsibilities, and accessible versus isolated lands.

There was discussion about information presented and how council members felt about the existing rates and full market value. There was discussion about how changes in the state's share of weight gains affect the multiplier factor in the grazing rate formula and how changes in the factor affect the rate per AUM. There was discussion about how carrying capacities are assessed and how an animal unit month is defined.

The next meeting was scheduled for Monday, March 21, 1994 in Helena in Room 312-2 of the Capitol. The meeting will begin at 8:00 am and adjourn at 5:00 pm.

The agenda for the next meeting was discussed. It was agreed that the council will deliberate on the grazing rental rate without further presentations from the public at that meeting.

The following information was requested from the DSL prior to the next meeting.

1. Information explaining the councils' charge in making recommendations on rental rates for each of the surface uses. It would probably be appropriate for John North to be available at the next meeting to go over these charges.
2. Worksheets showing how adjustments to the grazing rental formula affect the end result rental rate. Flip charts prepared with this information should also be prepared for assistance in discussions at the next meeting.
3. The packet of statutes referenced in SB 424.

The motion was made that this meeting be adjourned, seconded and passed unanimously.

- Minutes from March 21, 1994 meeting -

PRESENT: Dorothy Laird, Whitefish
Rick Miller, Missoula
Tom Loftsgaard, Peerless
Mark Rasmussen, Hogeland
Bill Crismore, Libby
Sen. Chet Blaylock, Laurel
Dave Moore, Big Timber
Ken Greslin, Broadus

Sen. Ken Mesaros, Cascade
Joan Schmidt, Fairfield
Dr. Charles Buehler, Butte
Marilyn Laughery, Lewistown
Lois Hill, Geyser
Kelly Flaherty, Canyon Creek
Rick Hartz, Dillon

ABSENT: None

The fourth meeting of the State Land Board Advisory Council began at 8:00 am on Monday, March 21, 1994, in Room 312-2 of the State Capitol with Dave Moore as Chairman.

The minutes from the February 11, 1994 meeting were approved.

Chairman Moore discussed the agenda for today's meeting and the materials mailed out to the council members.

Senator Blaylock stated he had thought at length about the noxious weed issue on state lands and recommended that his council recommend that the Department of Fish, Wildlife & Parks should raise hunting license fees to assist in weed control throughout the state.

John North discussed the council's charge in regard to the rental fees on surface uses of state land.

Chairman Moore opened the floor for discussion on grazing fees.

Dr. Buehler suggested that the council recommend that state land leases should be subject to open competitive bidding in order to achieve full market value. The market would establish the market value of the lease. Several council members disagreed because the preference right system was good for the land and the lessees. It was questioned whether open competitive bidding could work with the many separate and in-held tracts involved.

The council felt the best way to proceed was to begin with the prevalent private lease rate and then determine what deductions and additions were necessary when considering a state lease.

The following tables come from flip charts written by Marilyn Laughery as the council discussed the issue.

PRIVATE LEASE RATE	\$11.40
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DEDUCTIONS

Weed Control	\$ 2.92 ¹
Fencing	\$ 1.85 ²
Water developments	\$ 1.00 ³
Non-use	\$.56 ⁴
Access	\$ 1.57 ⁵
Fire suppression	\$.06 ⁶
Lessee management	?
deduction subtotal	<hr/> <hr/> \$ 7.96

¹ Derived from the Tim Watts and Steve Roth presentations at the February 11 meeting.

² Derived by averaging numbers presented by Watts (\$2.60), Roth (\$1.52) and the Bioeconomics report (\$1.44).

³ Derived by averaging figures presented by Watts (\$.92), Roth (\$1.15) and Bioeconomics (\$.95)

⁴ Derived from the assumption that 1 year out of 10 there would be non-use on a lease. Therefore, a 10% reduction of the rate per AUM would be around \$5.60, the non-use reduction would then be \$.56.

⁵ Derived from an average from the Watts presentation (\$2.00) and the Bioeconomics report (\$1.15). It should be noted that these two numbers are not for the same thing. The Watts figure was an assumption of the reduction in value recreational use imposes upon an AUM. The Bioeconomics figure was a result of a question asked of lessees of how much more that lessee would be willing to pay to control recreational use on a state lease.

⁶ Derived from the Roth presentation.

ADDITIONS

Length of lease (10 yr)	\$.56 ⁷
No property Tax	0 ⁸
Preference right	?
Access	?
Reduced game damage	?
<hr/>	
additions subtotal	\$.56
TOTAL	\$ 4.00

Chairman Moore requested each council member tear off a sheet of paper, write down what was felt to be a fair AUM rate for a state lease and give it to him. 14 members submitted ballots. The range was from \$4.00/AUM to \$7.60 per AUM. The average came out to be \$5.62/AUM.

Using this as an end result of the statutory formula this would mean a multiplying factor of 8.25 times the price per pound of beef. This equates to a 16.5% share of a 50 pound weight gain per AUM.

There was substantial discussion on how to reach justifiable numbers for all discussed reductions and additions. The council was unable to arrive at figures for those items marked as ? in the above tables. It was felt that there were should be values attributed for these factors, but no-one was comfortable assigning figures at this time. It was agreed to leave these factors blank until the next meeting at which time they would tentatively filled in .

⁷ Derived as an offset to the reduction of .56 for non-use.

⁸ The discussion regarding taxes was presented by Senator Blaylock. After considerable discussion a motion was made and a vote was taken by the council if taxes should be included as an addition to a state AUM value. The motion failed by majority vote opposed to the motion.

Other issues that arose during the grazing rate discussions that the council felt were necessary to discuss further in the future were:

1. Weed control language in the lease.
 - a. impose a fee on license for weed damage from game animals.
2. Access control for a price to the lessee.
3. Philosophy of access issue.

The council agreed that the next meeting be scheduled for Monday, April 25, 1994 in this same location, if available. The tentative agenda will be 1.5 hours to wrap-up the first round of discussions on grazing fees. 1.5 hours will be dedicated to presentations by Tom Loftsgaard and Mark Rasmussen (and/or other agricultural interests) regarding agricultural (cropping) lease rates. The remainder of the meeting will be for council discussions regarding agricultural lease rates. If anyone has other items to be included in the agenda, please contact Chairman Moore or Jeff Hagener ASAP.

- Minutes from the April 25, 1994 meeting -

PRESENT:	Dorothy Laird, Whitefish Rick Miller, Missoula Tom Loftsgaard, Peerless Mark Rasmussen, Hogeland Bill Crismore, Libby Sen. Chet Blaylock, Laurel Kelly Flaherty, Canyon Creek	Sen. Ken Mesaros, Cascade Ken Greslin, Broadus Dr. Charles Buehler, Butte Dave Moore, Big Timber Lois Hill, Geyser Rick Hartz, Dillon
ABSENT:	Joan Schmidt, Fairfield Marilyn Laughery, Lewistown	

The fifth meeting of the State Land Board Advisory Council began at 8:00 am on Monday, April 25, 1994, at Jorgenson's Motel.

The minutes from the March 21, 1994, meeting were approved.

The council discussed what values should be assigned for access, weeds, fencing, lessee management, preference right and game damage.

Senator Blaylock moved that the grazing rental should be 70% of the most recent average price of private lease rates in that area and that the rate be adjusted yearly. Motion seconded by Rick Hartz. There was discussion if the council could recommend this type of rate given that the statute calls for a multiplier for the grazing formula. The motion was ruled out of order by Chairman Moore. It was appealed by Senator Blaylock. Chairman Moore's decision was upheld on a 11-2 vote.

Dr. Buehler moved that the grazing rental use 70% of private lease rate in the region to compute the multiplier factor. This would currently yield a factor of 11.7. There was more discussion as to whether this met the statutory requirements. A Point of Order was called by Tom Loftsgaard. This was overruled by Chairman Moore. Rick Hartz seconded Dr. Buehler's motion. The motion failed on a vote of 2-11.

Tom Loftsgaard suggested that \$3.18/AUM be used as a value for lessee management. This was based on what he calculated it would cost for DSL management. After discussion, the council voted whether to assign a value to lessee management. The vote was 12-1 against assigning a value.

Senator Mesaros suggested that 10% of the private lease rate be used as a value for lessee preference right (\$1.14/AUM). The council agreed to the recommendation. After further discussion it was agreed that access and reduced game damage be removed as an addition. The adjustments to the private rate are summarized as follows:

PRIVATE LEASE RATE \$11.40/AUM

<u>Deductions</u>		<u>Additions</u>	
1. Weed Control	\$ 2.92	1. Length of Lease	\$.56
2. Fencing	\$ 1.85	2. Preference Right	<u>\$ 1.14</u>
3. Water Developments	\$ 1.00	Additions Subtotal	\$ 1.70
4. Non-use	\$.56		
5. Access	\$ 1.57		
6. Fire Suppression	<u>\$.06</u>		
Deduction Subtotal	\$ 7.96		

$$\mathbf{\$11.40 - \$7.96 + \$1.70 = \$5.14}$$

Senator Mesaros moved that there be tentative agreement to set the fee at \$5.14/AUM. Seconded by Bill Crismore. Passed 13-0. Using the 1993 weighted average price for beef cattle in Montana, a factor of 7.54 would be necessary to arrive at \$5.14 per AUM.

The council began discussions on crop share rates. Mark Rasmussen presented information on private lease rates, but pointed out the state does not share in any expenses. He

also discussed how current statutes force the state to market its grain when prices are typically at their lowest. The state could probably increase revenue by better marketing of its grain. Another option for the state is cash leasing.

Tom Loftsgaard presented information on the farm program and his costs for farming state leases in Daniels County. Based on those costs and the average county production, farming at the 25% crop share was marginally profitable for wheat and even less so with barley.

The council discussed whether to solicit addition input on crop rentals. Rick Hartz moved to delay public input until the council had tentatively addressed all items but before making recommendations to the Land Board. Seconded by Dr. Buehler. Passed 13-0

Rick Hartz moved that the department investigate delaying crop payments/marketing grain until January/February. Seconded by Mark Rasmussen. Passed 12-1.

Rick Hartz moved that the minimum crop share rate stay at 25%. Seconded by Lois Hill. Senator Blaylock moved to amend the motion to include a recommendation to the Land Board that they move toward cash leases. The amendment was seconded by Kelly Flaherty. The amendment passed on a 13-0 vote. The motion passed 13-0.

The next meeting date was set for June 14 in Helena. The council will consider recreational use and outfitting fees.

Meeting was adjourned at 4:30 pm.

- Minutes from the June 14, 1994 meeting -

PRESENT:	Marilyn Laughery, Lewistown Rick Miller, Missoula Tom Loftsgaard, Peerless Bill Crismore, Libby Joan Schmidt, Fairfield Kelly Flaherty, Canyon Creek	Sen. Ken Mesaros, Cascade Ken Greslin, Broadus Dr. Charles Buehler, Butte Lois Hill, Geyser Rick Hartz, Dillon Dave Moore, Big Timber
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ABSENT:	Sen. Chet Blaylock, Laurel Dorothy Laird, Whitefish Mark Rasmussen, Hogeland
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The sixth meeting of the State Land Board Advisory Council began at 8:00 am on Tuesday, June 14, 1994, at Jorgenson's Motel.

The minutes from the April 25, 1994, meeting were approved.

Jeff Hagener gave an overview of the new rules for recreational use that the Land Board adopted at their June 6, 1994 meeting.

Dr. Buehler led a discussion on recreation use fees. He had discussed various options with different individuals, other states and DFWP. He proposed that it be added as an additional fee on the conservation license and that DFWP use those monies to negotiate with DSL to purchase access rights to state land.

Marilyn Laughery noted that in calculating a grazing fee, recreational use was determined to be worth $\approx \$1,600,000$ ($\$1.57/AUM \times 1$ million AUMs).

Ken Mesaros felt that if one use diminishes income to the trust, the fee for that use should at least balance out the revenue.

Dr. Buehler moved to add a fee to the conservation license to be negotiated between DSL and DFWP for hunting and fishing on state land and that there be a separate license for other uses. Ken Mesaros felt the council's charge was to recommend a specific fee. The motion was not seconded.

The council discussed the idea of separate fees for residents and non-residents. John North advised that he felt the council had the flexibility to recommend 2 fees.

Joan Schmidt moved the recreation use fee for residents be at one level and that the fee for non-residents be at a higher level. Seconded by Marilyn Laughery. Motion passed 11-1.

Joan Schmidt moved that the council work toward a 3-year process to implement the recreational use fee. Dave Moore determined that the motion was something the council could recommend to the Land Board but not as a mandate.

Dr. Buehler moved that the fee be set at \$10 for residents and \$20 for non-residents. Seconded by Rick Hartz. The motion failed on a 1-11 vote.

Rick Miller moved that the fee be set at \$18 for residents and \$36 for non-residents. He also felt the council should separately consider recommending to the Land Board that the fee should be attached to the conservation license, the fee should be raised incrementally, the Board consider competitive bidding, and that there be better enforcement and stiffer penalties. The motion was seconded by Tom Loftsgaard. The motion failed on a 4-8 vote.

John North responded to questions about decreasing revenues from one use and not replacing it. He thought it could be argued that a trust manager would not be prudent if the manager allowed an overall loss in trust revenue. He said that it would also be difficult to defend a suit if someone would offer more for exclusive recreational use than what the current program generates, and it was turned down by the board.

Joan Schmidt led a discussion on incremental fee increases and trying to establish what the lowest acceptable rates would be.

Dr. Buehler moved that the resident fee be set at \$10 and the non-resident be \$20, and to recommend to the Land Board to raise the fee incrementally over time and to maximize revenue by taking into account the number of licenses sold and the amount generated each year. The motion was seconded by Ken Greslin. The motion failed on a 2 - 10 vote.

Rick Hartz moved that the resident fee be set at \$15 and the non-resident at \$35. The motion did not receive a second.

Tom Loftsgaard moved that the resident fee be set at \$20 and the non-resident be \$40. Seconded by Joan Schmidt. The motion failed on a 2 - 10 vote.

Ken Mesaros moved that the resident fee be set at \$25 and the non-resident be \$50. Seconded by Marilyn Laughery. The motion passed on a 9 - 3 vote.

The council began discussions on outfitting fees. DSL staff explained that currently those fees are negotiated between the outfitter and DSL area managers. In those cases where more than one outfitter is interested in exclusive use, the licenses are competitively bid. The bidding is usually by sealed bids, but oral bidding is sometimes used. Lois Hill and Ken Greslin gave an overview of how each of their business operates.

Tom Loftsgaard moved to leave the existing outfitting fees in place. Seconded by Ken Greslin. The motion passed on a 11 - 1 vote.

Pat Graham and Dave Mott from DFWP met with the council to discuss the possibility of using an additional fee on the conservation license to purchase recreational rights to state lands. It was explained that they can't use conservation fees for uses other than hunting and fishing. For example, DFWP can not force a hiker to purchase a conservation license. Diverting those fees for other uses would result in the loss of their federal funding. They also expressed concerns about everyone having to pay for a use via the conservation license when not everyone would in fact use state lands. They suggested that DSL and DFWP negotiate an mutual agreement to purchase hunting and fishing rights and the council shouldn't get hung up on what funds DFWP would use to pay for such agreement. A separate license would be necessary for other recreational uses.

The next meeting date was set for Tuesday, July 26, 1994 at Jorgenson's. The primary topic of discussion for the July meeting will be cabinsite/homesite rental rates. An August 16, 1994 meeting date was also tentatively set.

- Minutes from July 26, 1994 meeting -

PRESENT: Dorothy Laird, Whitefish
Rick Miller, Missoula
Tom Loftsgaard, Peerless
Mark Rasmussen, Hogeland
Bill Crismore, Libby
Sen. Chet Blaylock, Laurel
Kelly Flaherty, Canyon Creek

Sen. Ken Mesaros, Cascade
Joan Schmidt, Fairfield
Dr. Charles Buehler, Butte
Marilyn Laughery, Lewistown
Lois Hill, Geyser
Rick Hartz, Dillon
Dave Moore, Big Timber

ABSENT: Ken Greslin, Broadus

The seventh meeting of the State Land Board Advisory Council began at 8:00 on Tuesday, July 26, 1994, at Jorgenson's motel.

The minutes from the June 14, 1994, meeting were approved.

Les Sisbury, from the Department of Revenue's Property Assessment Division, gave an overview of how that Department sets the land values used by DSL for homesite and cabinsite lease rentals. Mr. Sisbury explained that they use comparable sales to determine land values for an area. Sales information from Reality Transfer Certificates are entered into their Computer Assisted Mass Appraisal System (CAMS) to set land values. They try to use bare land sales when possible. Sales information in the western areas of the state are generally plentiful but are less so in the more rural eastern areas. The appeal process that is available to property taxpayers can be used by cabinsite/homesite lessees to appeal the land value set by DOR for their site.

Rick Miller gave an overview of cabinsites in the Seely and Placid Lake areas. He explained what he felt were some of the problems with the way DOR sets land values. He also discussed the sale of leasehold interest for these sites. In a July 16, 1994, meeting with state leaseholders, they⁹ defined 4 areas of concerns. They are:

1. The leases do not have accurate surveys or boundaries, so the appraisals/assessments are not accurate.
2. Under a lease they do not have fee simple usage as someone who owns the land has.
3. There is no cap or certainty to the lease and rental. They feel they are paying more than someone who owns the land.
4. There are no on-site inspections for appraisal purposes.

⁹ A listing of the leaseholders at this meeting is attached at the end of the minutes.

Dave Turner, a cabinsite lessee at Placid Lake gave some information about his lease. He felt that if you limit the sale of leasehold interest in the future, you take away what that leaseholder had to pay to acquire the lease. He discussed the points in his letter which he mailed to the Council and Board members.

Tim Tanberg, a cabinsite lessee from Seely Lake, discussed what he felt were some of the problems with the cabinsite program. They include:

- Not enough staffing in DSL to manage on a site specific basis.
- Lack of continuity in program.
- Not enough consideration given to local economies.
- Leases in the Seely Lake area are lumped together as recreational.
- Uncertain lease boundaries.
- Can not borrow against improvements on leased land.

Jeanne Fairbanks, Special Uses Supervisor - Forestry Division, clarified a few points which had been discussed earlier. She explained that state laws requires compensation to a former lessee before a new lease can be issued. The 100' set back on cabinsites is to provide administrative access to other lands. Cabinsites and homesites are not subject to competitive bidding at renewal.

The council discussed how to set a rate for these leases. Using market rates and adjusting for the state lease was considered, but it was decided that there was not enough market information available for that method.

Marilyn Laughery moved to leave the 3½% lease fee in place. Seconded by Dorothy Laird. After some discussion about minimum rentals, the motion was withdrawn.

Marilyn Laughery moved that in view of increasing land values, the 3½% rate be retained with a minimum rental of \$250.00. Seconded by Dorothy Laird.

Senator Blaylock made a substitute motion that the Land Board begin a policy of requiring sales of cabinsites by competitive auction at lease expiration. Seconded by Tom Loftsgaard. Dave Moore felt this was an issued which should be made as an additional recommendation. The substitute motion failed on a voice vote.

Marilyn Laughery's motion passed on a 9 - 5 vote.

Dr. Buehler expressed concern that the council's recommendations if challenged may show that they are not achieving full market value.

Joan Schmidt led a review of the council's missions, goals and the process to accomplish them. The council discussed how the recommendations should be finalized and when they should be presented to the Board. Senator Mesaros thought that it should be presented to them by September to give them time to prepare for the 1995 legislative session.

It was agreed that the Department would send out a draft summary of the recommended rates, the rationale and a summary of additional recommendations. At the August 16 meeting the council would finalize the document so that it could be released as a draft for public comment.

The council discussed further considerations for cabinsite/homesite leases. Rick Hartz thought that cabinsites should be subject to competitive bids at renewal with the lessee having a preference right. Dr. Buehler would rather see an appropriate rental fee rather than competitive bidding.

Rick Hartz moved that the council recommend that when cabinsites leases come up for renewal, they are subject to competitive bidding with the previous lessee having the preference right to match the high bid and the right to request a hearing to have the competitive bid rate reduced. Seconded by Kelly Flaherty. The motion failed 3 - 11.

Senator Blaylock moved that the council recommend that when cabinsites leases come up for renewal, they are subject to competitive bidding with the previous lessee having the preference right to match the high bid. Motion failed 4 - 10.

Rick Miller moved to recommend more lands are reclassified for cabinsites to meet the growing demand. Seconded by Dave Moore. Motion failed 2 - 12.

Dr. Buehler moved to increase the 3½% rate each year by 20% until it reached 5%. Seconded by Senator Blaylock. Motion failed 5 - 9.

The council discussed the possible option of requiring sale of a cabinsite at the time of assignment with the former lessee not having an opportunity to bid. There was no consensus on the issue.

The meeting was adjourned at 5:00 pm.

- Minutes from August 16, 1994 meeting -

PRESENT: Dorothy Laird, Whitefish
Rick Miller, Missoula
Tom Loftsgaard, Peerless
Marilyn Laughery, Lewistown
Sen. Chet Blaylock, Laurel
Kelly Flaherty, Canyon Creek

Sen. Ken Mesaros, Cascade
Joan Schmidt, Fairfield
Dr. Charles Buehler, Butte
Lois Hill, Geyser
Rick Hartz, Dillon
Dave Moore, Big Timber

ABSENT: Ken Greslin, Broadus
Mark Rasmussen, Hogeland
Bill Crismore, Libby

The eighth meeting of the State Land Board Advisory Council began at 8:00 on Tuesday, August 16, 1994, at Jorgenson's Motel.

The minutes from the July 26, 1994 were discussed, Marilyn Laughery moved the approval, seconded by Ken Mesaros, and passed unanimously.

Chairman Moore directed the discussion to the draft recommendations that have been made to date by the Council. Since several cabinsite lessees were in the audience, it was decided to discuss the cabinsite/homesite rental recommendation first. It was noted that the draft recommendations were not complete in that the new recommended \$250 minimum had not been included. The next draft shall include the minimum.

Rick Miller handed out a letter to each of the council members from Dave Turner.

Early discussions led to some general overall recommendations on exchanges, sales and the land banking concept.

Joan Schmidt moved that the Land Board explore trade and sales options (including land banking) which would enhance and protect trust assets. Marilyn Laughery seconded the motion. There was concern expressed over land banking that the revenues received from sales must be carefully protected against diversion to non-trust uses. It was noted that in other states where land banking is utilized, there are limitations on amounts and/or time limits on funds held in land banking accounts. The motion was approved by a vote of 11-1.

Dr. Buehler moved to recommend to that the Land Board liquidate in-holdings (state land entirely surrounded by one private landowner) and small non-productive parcels. The motion was seconded by Marilyn Laughery. There was discussion on whether there needed to be further clarification of "non-productive" and "small". It was determined the those were better interpreted by the Land Board and the DSL. The motion was approved 11-1.

Rick Miller proceeded to lead discussion regarding cabinsite lease rentals. Mr. Miller identified the following issues that did not receive support for consideration as motions.

1. The Land Board should be encouraged to move forward with sales of cabinsites and the lessee should be allowed the right to meet the high bid and the bidding would then stop there. Jeff Hagener explained that the Enabling Act requires public sale. Court cases have interpreted that to mean oral auction and there cannot be a cap on willing bidders. Capping the bidding would be allowing the property to be sold at less than full market value.
2. All lessee improvements need to be listed by the DSL prior to sale of the property.
3. A reasonable appraisal method needs to be established. The currently used DOR appraisal methodology is not fair to the lessees.
4. The DSL needs to establish permanent and accurate boundaries. The Land Board should require the DSL to survey all existing cabinsites to clearly identify the boundaries.
5. More emphasis on influence (of state lease rentals) on state and local economy.
6. The current appraisal is based on fee simple usage which is not fair to the current leaseholders. Lessees should not have to pay for usage that they are not receiving.

Another issue was that more emphasis should be placed on adequate management. The number of leases should match the demand for leases. State lands should be managed more like a business. Rick Miller moved that the Land Board explore the possibility of earmarking a percentage of the revenues from state land uses for use by the DSL in managing the trust resources. The motion was seconded by Dorothy Laird and failed 3-9.

A final motion offered by Rick Miller was that the Land Board direct the DSL to determine accurate boundaries of cabinsites/homesites. No time limits for the boundary determinations was offered. The motion was seconded by Dorothy Laird and passed 7-5.

Chairman Moore then directed the discussion to the recommendations regarding recreational use. Jerry Wells of DFW&P addressed the Council with DFW&P concerns regarding the draft additional recommendation. Mr. Wells explained the funding for DFW&P from license fees and fishing and hunting equipment excise taxes. The use of any of DFW&P funds for any purposes other than hunting and fishing would jeopardize DFW&P funding. Additionally the Director of the DFW&P must have all control of the funds. Mr. Wells and Dr. Buehler briefly discussed the agreement whereby the New Mexico Fish and Wildlife agency paid the New Mexico Land Department \$0.01/acre for public hunting and fishing use on state lands. All other uses require a separate \$25.00 license from the New Mexico Land Department. In Colorado the Fish and Wildlife agency is selecting lands from the Land Department for leasing for wildlife habitat.

Dr. Buehler recommended that the draft recommendation be re-written as a motion to recommend that the Land Board pursue legislation to allow the DFW&P to bargain a fee with the DSL for recreational access to state lands for legal hunting and fishing. Funding (or a portion thereof) would be obtained for this program by adding an amount to conservation or hunting and fishing licenses. A separate license would be provided by DSL for all other recreational activities. The motion was seconded by Rick Hartz. Advantages of this proposal would be:

1. Less trespass - all hunters and fishermen would have legal right to trespass - decrease enforcement obligation.
2. More money could be obtained to reimburse trusts for recreational use - mainly by spreading the costs over a greater number of licensees.
3. Lost funds for production and handling of separate licenses would be eliminated.

The motion passed 8-3.

Tom Loftsgaard made a motion later in the day that related directly to Dr. Buehler's motion passed above. Mr. Loftsgaard's motion was that in the event that the Land Board considered the motion on the development of an agreement between DFW&P and DSL regarding recreational use of trust lands, that the minimum compensation to the trusts for recreational use be tied to the discount applied to the grazing AUM fee due to recreational use impacts. The motion was seconded by Senator Mesaros and failed on a tie vote of 6-6.

The discussion moved to outfitting rentals. There were no recommended changes or additional recommendations voiced regarding outfitting.

The discussion moved to grazing rentals. There was brief discussion about the discount factors applied with no changes recommended.

The additional recommendation regarding weed control language in the lease was discussed. After discussion about the DSL handling of weed control issues and a review of the actual lease language, it was determined that this recommendation was not necessary and should be deleted from the report.

The second recommendation regarding lessee opportunity to purchase the recreational use rights was discussed. The issue is actually twofold; the lessee purchasing the right to control recreational use on legally accessible lands; and should lessees that don't have to deal with recreational use (in-holdings) be given the \$1.57/AUM discount? The council determined that this additional recommendation be left as is.

The discussion moved to agricultural lease rentals. Tom Loftsgaard stated reservations about the cash lease recommendation due to uncertainty of how cash leases would be calculated. Mr. Loftsgaard said one of the biggest concerns from his area about cash leasing was that it was unfair to the lessee due to the state not sharing in the risk related to raising a crop.

Joan Schmidt moved that the motion on cash leasing be revised to read: recommend that the Land Board consider requiring cash leases for all cropland leases. The motion was seconded by Tom Loftsgaard and approved 7-5.

Discussion ensued regarding the timing and marketing of grain. Two issues were involved here; the time of sale of the grain by the lessee, and the actual marketing of grain by the DSL rather than the lessee or the elevator. Tom Loftsgaard moved that the motion be reworded to recommend that the Land Board consider legislation to enable the DSL to market the state's share of crops at the most advantageous time. The motion was seconded by Senator Blaylock and passed unanimously 12-0.

The Council then discussed how to format the recommendations for submittal to the Land Board. It was agreed that the Chairman should present the majority report. The goal is to present the finalized report for action to the October 17, 1994 Land Board meeting.

The existing format is good for part of the final report. Additionally, the final report shall include: a preamble to be prepared by Chairman Moore and Joan Schmidt (discuss the number of meetings, level of review and efforts of the council on difficult issues); the council's mission statement from the Land Board; a listing of all resources (written materials and presentations) considered by the council; and an addendum made up of the minutes from all meetings.

Senator Blaylock explained that he wished to submit a minority report regarding the grazing rentals. Rick Miller and Kelly Flaherty expressed that they wished to submit separate minority reports on cabinsite rentals. Discussion continued on how minority reports should be handled.

Tom Loftsgaard expressed concern that the council had not gone far enough to address all the issues of concern. The issue of fairness needs to be reviewed further - agricultural interests seem to be bearing the brunt of paying for school funding. Mr. Loftsgaard felt all users should have to pay rental based upon a market driven rate. Recreational and other uses should all be put up for competitive bids. Mr. Loftsgaard stated that the Land Board should go further and consider achieving more income from other sources not currently tapped. The council discussed these issues, but no further motions were presented.

Joan Schmidt moved that the council review prepared statements of minority concern and determine whether to include them in the finalized report. The motion was seconded by Marilyn Laughery and failed 5-7.

Dr. Buehler moved that all failed motions and respective votes (as written in the minutes) be recorded in the finalized report as addendum to each appropriate section. The motion was seconded by Kelly Flaherty and failed 5-7.

The issue rested with the understanding that no minority reports would be included in the finalized report. Any minority opinions by council members could be offered at the Land Board after the Chairman's presentation and after the answering of questions regarding the finalized majority report. It was recommended that all motions and votes be hi-lighted as they appear in the individual meeting minutes in the addendum.

The DSL will assemble a final draft of the recommendation report and send to the council members for review ASAP. Tentatively, comments should be returned to DSL by September 9. A phone conference call may be required to incorporate these comments. If issues cannot be resolved by conference call, then the council will meet on September 27. In late September the final report will be delivered to the Land Board members and released for public information. The public will be given an opportunity at the October 17, 1994 Land Board meeting to comment.

The meeting was adjourned at 4:45 pm.

NOTE: These minutes have been summarized by DSL personnel. The summarized version included here is the complete context as approved at each subsequent council meeting. The entire context of each council meeting was recorded and can be made available if someone wishes to listen to any particular meeting.

Every motion made during the council meetings has been redlined to identify those motions and associated discussion.

